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OGC Has Reviewed

10 September 1953

Memorandum for the Record

Subject: Annual Leave Escrow Accounts

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1. Proposed Dispatch [ ] emphasizes another difficulty confronting this Agency in its attempts to harmonize its administration with statutes and regulations of general application designed for normal Government administration. Per our conversation, I have signed the proposed dispatch as coordinating officer and bring it to your attention as a matter for further reference to the DD/A.

2. Recent legislation, namely Title 2 of Public Law 233, 82nd Congress, as amended by Public Law 102, 83rd Congress, cited popularly as the "Annual and Sick Leave Act of 1951" establishes ceilings against further accumulations of leave, provides for the current liquidation of earned leave, and ultimately directs agencies to reduce accumulations to specified levels. Suffice to say the present escrow account arrangement, whereby the annual and sick leave is frozen as a credit to the account of the employee pending his return to the Agency, is out of step with the aforesaid legislation, and should be acknowledged as a necessary Agency departure from conventional principles of Government administration due to the unique character of Agency operations.

3. Alternative solutions to the problem are indicated below and pertinent comments have been added:

A. Lump-sum Leave Payment - This is really a fiction inasmuch as the employee concerned does not in fact leave the employment of the Government. In addition, adverse tax consequences would result inasmuch as the lump-sum payment would be taxable as income in the calendar year received. In addition, inasmuch as the Government has now generally been placed on the same leave system, except for statutory home leave benefits, the lump-sum payment cannot be made on the basis of transferring to a different leave system.

B. Transfer - Public Law 102, 83rd Congress, now provides that "in the case of transfer of an officer or employee between positions under different leave systems....

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without a break in service, the annual and sick leave to the credit of such officer or employee shall be transferred to his credit in the employing agency on an adjusted basis in accordance with regulations to be prescribed by the Civil Service Commission."

C. Forfeiture - Although the decisions of the Comptroller General have been somewhat strict in the field of "forfeiture" I believe the action of this Agency would be legally questionable were it to state that all leave to the credit of an employee under the circumstances concerned would be forfeit.

D. Escrow Account Arrangement - This obviously is the most equitable arrangement. The extension of the "home leave benefits" of Public Law 233 (section 203F) would materially assist, though not eliminate, the solution of this problem. Under Public Law 102 the agencies are directed to reduce accumulation to 30 days within a reasonable period of years consistent with the exigencies of the public and "to make such reports with respect to the action taken as may be requested by the Civil Service Commission."

/s/

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Assistant General Counsel

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